

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAVALL T. LEE,

Plaintiff,

v.

Case No. 20-C-396

WILLIAM JAMES and EDWARD JONES,

Defendants.

**ORDER DENYING MOTION TO COMPEL AND
MOTION FOR A PROTECTIVE ORDER**

Plaintiff in this case has filed a motion to compel production of a video allegedly showing the incident that is the subject of his lawsuit, namely the use of a chemical spray which he claims constituted excessive force. In his motion, Plaintiff concedes that the defendants have told him they do not have a video recording of the incident. He nevertheless contends in his motion that, having failed to preserve it, the defendants must be deemed to have admitted all facts in his Amended Complaint.

The motion is denied. The court has no power to compel production of documents or other items that the defendants do not have. Defendants are instructed to notify the court if, in fact, they have such a video, but on the assumption that Plaintiff is correct, namely that they do not, the motion is denied.

Plaintiff also seeks a protective order for a witness, Sergeant Scott Gudal. It is unclear what a protective order for a witness would look like. Plaintiff contends that this is a “potential ‘Obstruction of Justice’ in a quest to Suppress this Witness from revealing the Truth that Officer James was Ordered Not to spray in the May 29, 2019 incident.” Dkt. No. 45 at 1. The court knows

of no authority it has to order a protective order over a witness. Presumably, Sergeant Gudal does not need protection of the court and is able to truthfully state facts relevant to the incident if and when it comes to trial or, if necessary, by affidavit or a declaration. In any event, this motion is denied.

SO ORDERED at Green Bay, Wisconsin this 26th day of October, 2020.

s/ William C. Griesbach

William C. Griesbach

United States District Judge